IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Civil Writ Petition No. 2092 of 2001 (M/S)
Old No. 27846 of 2000

State of U.P. and another …… Petitioner.

Versus

P.O. Labour Court and another …… Respondents.

Date of decision: 29, October 2004

For the approval of:

Hon'ble Mr. Justice P.C. Pant.

- Whether the order/Judgement should be sent to the reporters for reporting? (Yes)

- Whether the reporters be allowed to see the judgment? (Yes)

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Writ Petition No. 2092 of 2001 (M/S)
Old No. 27846 of 2000

State of U.P. & another. ……. Petitioners.

Versus

Presiding Officer, Labour Court & another … Respondents.

Standing counsel for the petitioners.
Sri A.K. Sharma, counsel for respondent No. 2.

HON'BLE Prafulla.C. PANT- J.

1. By means of this writ petition, moved under Article 226 of Constitution of India, the award dated 31.12.1999 passed by Presiding Officer, Labour Court, Dehradun has been sought to be quashed.

2. Brief facts of the case as narrated in the Writ petition are that vide Government Notification No. 6513/Assistant IRCP 55 (S) 99 dated 18.08.1999 reference was made to the Labour Court which was registered as No.282 of 1999 for adjudicating the dispute if removal of Tejpal Singh (respondent no.2) from service is lawful. Before the Labour court parties appeared and presented their case. The case of respondent no.2 is that he was employed on 01.06.1987 as Beldar (work charge) on daily wages and he was retrenched without making payment of compensation required to be given under the law. As against this, the petitioner's case before the Labour court was that in none of the years the respondent no.2 worked for more than 240 days, as such, he has no protection of workman on daily wages. An objection was also raised before the Labour Court that the dispute was being raised after unreasonable delay of seven years without showing any cause for delay. However, the Labour court,

after the evidence is adduced before it, and hearing the parties, gave a finding that the petitioner is a workman and has worked more than 240 days in a single calendar year. It also held that the Irrigation Department in which the respondent no.2 was working is an industry. It further held that on the ground of delay respondent no.2 can not be denied his due, and with these findings through the impugned award dated 23.12.1999 reinstatement of the respondent no.2 was ordered with Rs. 5000/- as compensation and Rs. 500/- as costs. Aggrieved by the same, alleging it to be against the principle of laws, this writ petition has been filed by the State.

3. The petition is contested by the respondent no.2 but no counter affidavit was filed on his behalf.

4. I heard learned counsel for the parties and also perused the record.

5. The short question for consideration before this court is whether the impugned award given by the Labour lCourt is illegal and liable to be quashed.

6. It is not disputed that the respondent no.2 has worked as Beldar (work charge) on daily wages with the petitioner. The dispute relates to the fact that if his removal was against law as held by the learned Labour Court. The first point raised by the petitioner is that the Labour Court erred in law by not dismissing claim of the respondent no.2 on the ground that dispute was raised and it was referred after long unreasonable delay of seven years without sufficient explanation for the delay. In reply to this, the learned counsel for the respondent no.2 submitted that since provisions of Limitation Act, 1963 are not applicable to

the industrial dispute, as such, in view of the principle of law laid down by the Supreme court in **(1999) 6 S.C.C. 82 Ajaib Singh Vs Sirhend Co.operative Marketing and another,** at the most back wages can be denied on the ground of delay and the reference can not be adjudicated against the workman. In view of the settled position of law the submission of learned counsel for respondent no. 2 appears to be correct to that extent. However, the long delay of seven years appears to have not taken into account while appreciating the stand taken by the petitioner before the Labour Court that respondent no.2 himself left the job and he was not removed from service. Sleeping over for as many as seven long years was itself indicative that the petitioner was not removed as he has alleged before the Labour Court. Had it been so he would have immediately sought the remedy to challenge his removal. Not only this, the Labour Lcourt has presumed that the respondent no.2 worked more than 240 days in a year against the evidence on record. Annexure 2 to the writ petition shows the copies of the muster roll and the number of days the respondent no.2 has worked in the year 1989,1990 and 1991. In none of the years respondent no.2 appears to have worked for 240 days. If the Labour Court felt that some other muster roll have been concealed he could have summoned it and directed the petitioner to file the same before it but making presumption against the evidence on record can not be upheld by this court. As such, the learned Labour Court appears to have erred in law by presuming that the respondent no.2 has worked for for more than 240 days in a single calendar year. The figure of each year is less than 100,

i.e. 55 days in 1989, 90 days in 1990 and 45 days in 19991. The figure is no where near the required number of days for which the respondent no.2 must have worked.

7. In the circumstances, in view of the above discussion the award given by the Labour Court appears to be against law and the same is liable to be set aside.

9. Accordingly writ petition is allowed. Award dated 23.12.1999 passed by the respondent no.1 is quashed. However, payment, if any, made to the respondent no.2 meanwhile in response to the impugned award, shall not be recovered back from respondent no.2. no order as to costs.

(Prafulla .C.Pant J)

Dated: October 29,2004.
S.S.Negi.